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09/629,013

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11764 RAINTREE COURT  
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EXAMINER

CARLSON, JEFFREY D

ART UNIT

PAPER NUMBER

3622

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/629,013  
Filing Date: July 31, 2000  
Appellant(s): PERTTUNEN, CARY D.

\_\_\_\_\_  
Cary D. Perttunen  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/13/2004.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the Grounds of Rejection to be Reviewed on Appeal in the brief is correct. It is pointed out that the 102 rejection (using Culliss) of claims 36, 37 and 39-41 was inadvertently maintained in the final rejection. Examiner concedes that this rejection is improper.

**(7) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Prior Art of Record**

6,308,202	COHN et al	10-2001
6,078,916	CULLISS	6-2000

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5,948,061	MERRIMAN et al	9-1999
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6,269,361	DAVIS et al	7-2001
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Netscape's Communicator third party cookie option foiled,

[www.cookiecentral.com/dsc3.htm](http://www.cookiecentral.com/dsc3.htm), 12/11/1997 (cached by [www.archive.org](http://www.archive.org)).

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The 102 rejection (using Culliss) of claims 36, 37 and 39-41 was inadvertently maintained in the final rejection. Examiner concedes that this rejection is improper.

Claims 10-12, 14, 16-25, 27, 29-36, 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culliss in view of Cohn et al (US6308202).

Regarding claims 10-12, 24, 25, Culliss teaches a user executing a search via a web-based search engine. A web page containing organized links are returned to the user. The HTML page of links is taken to provide programming script which contains variables that define each of the ordered links (such as URLs, link order, link titles) that are read. The user's search activities are recorded [abstract, 5:32-67]. Culliss teaches that the search activity history can be stored as cookies [29:22-30] and that the search activity histories can affect future search result scores and subsequently, the returned results and their order [17:1-34]. In this manner, cookies are provided before the user selects a link of a search hit. Culliss teaches that the links selected by the user are tracked and used to modify future search results. This inherently requires cookie-

storage of the specific link information along with user search and selection history.

Culliss teaches search results and activity to be tracked using cookies. Culliss teaches to score the search hits as well as the search *selections* [7:10-22]. Cohn et al teaches the idea of showing ads based upon the selected link URL. It would have been obvious to one of ordinary skill at the time of the invention to have included advertising with the system of Culliss based on the selected link(s) so as to generate revenue.

Regarding claim 23, providing the dynamic web page results (search results based on the latest scores) inherently includes reading of the links, the link information and link order (variables) as the server renders a dynamic HTML page of search results for the user. The use of cookies by the ad provider inherently includes at least temporary storage of the cookies in a database/datastore in order for the server to read & retrieve the data from within the cookies.

Regarding claims 16, 29, the list of search hits/links is taken to be a tree which provides "tree-defined advertiser-useable variables."

Regarding claims 17, 30, 36, 39-41, the ordered list of matches to the user-submitted search terms provides level numbers of the tree; ads targeted to ordered links/URLs are taken to be targeted to the ordered positioning where they reside within the list. The links can be considered to be all at the same level or each at different levels. Applicant's claim language is quite broad - the level(s) can be defined in a variety of ways. Further, Culliss teaches that the system scoring is based upon the relative positioning of the links within the list/tree [16:54-67]. Regarding claims 40, 41, any of the positions represent URLs which can be used as a basis for targeted ads.

Regarding claim 18-22, 31-35, any of the links appearing within the tree/list of results can be taken to be “internal” to the list/tree, as members of the tree/list. Alternatively, the links on the list/tree can be taken as “leaves” on the tree – no structural definition is provided by the claim. The list can simply be taken to be leaves in a list. As best understood, claims 21 and 22 are met by Culliss providing a first link having links below it as well as a second link having links below it as inherent in the search results list/tree. The parameters for defining levels, leafs, nodes etc need not be presented by the art, but merely a tree/list structure which can be described as such by an observer.

Regarding claim 14, 27, it would have been obvious to one of ordinary skill at the time of the invention to have satisfied the advertising requests by reading the cookies to determine URLs.

Claims 13, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culliss in view of Cohn et al and Merriman et al (USUS5948061). Merriman et al teaches customized advertising whereby ad impressions are tracked so that the ad can be shown the appropriate number of times during the ad campaign. It would have been obvious to one of ordinary skill at the time of the invention to have included such ad impression tracking with that of Culliss and Cohn et al. Merriman et al's tracking and updating of the history of the targeted ad displays is taken to update a data structure associated with the ad, based on the variable.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Culliss in view of Cohn et al and Davis et al (US6269361). Davis et al teaches the idea of advertisers paying to affect the placement/order of search results. It would have been obvious to one of ordinary skill at the time of the invention to have included such a component with the scoring and ordering of Culliss' search results, so as to generate additional revenue for the site. Advertisers pay more for higher listings as taught by Davis et al.

Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culliss in view of Cohn et al and [www.cookiecentral.com](http://www.cookiecentral.com) ([www.cookiecentral.com/dsc3.htm](http://www.cookiecentral.com/dsc3.htm) - Netscape's Communicator third party cookie option foiled – 12/11/1997). The [www.cookiecentral.com/dsc3.htm](http://www.cookiecentral.com/dsc3.htm) reference document was pulled from the 12/11/1997 cache of the cookiecentral site at [www.archive.org](http://www.archive.org). [www.cookiecentral.com](http://www.cookiecentral.com) teaches that a content website can be provided with customized advertising from a third party advertiser. This can be provided by the use of third-party cookies set by the advertising server for the user visiting the content page. Official Notice is taken that cookies set by a particular domain can only be read by servers from that domain. It would have been obvious to one of ordinary skill at the time of the invention to have provided the proposed advertising for claim 10 via a third party advertising service so that the search engine entity could focus its efforts on its core business of providing search results and outsource its advertising services to such a

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third party. In this case, third party cookies used to delivery customized advertising would be readable by the third party ad server and not readable by the search engine or the content sites hosting the resources represented by the "search hits."

**(10) *Response to Argument***

Applicant argues that the variables are read and stored in a cookie before any links are selected by the user. As stated above, the historical component of Culliss' tracking provides variable reading and cookie processing before the links are subsequently selected by the returning user. Regarding claim 23 as stated above, providing the dynamic web page results (search results based on the latest scores) inherently includes reading of the links, the link information and link order (variables) as the server renders a dynamic HTML page of search results for the user. The use of cookies by the ad provider inherently includes at least temporary storage of the cookies in a database/datastore in order for the server to read & retrieve the data from within the cookies.

Regarding claims 16, 17, 30, 29, the list of search hits/links is taken to be a tree with each link having a level number; the links providing "tree-defined advertiser-useable variables."

Applicant argues that Culliss does not teach the ad server to provide cookies in a database. However, handling of cookies necessarily requires at least temporary storage of cookie data in a datastore/database by the server.



Applicant argues that the examiner's definition of internal and leaf are inconsistent with convention/specification. It is noted that the listing of Culliss's links can be defined in many different manners in terms of hierarchy, leaf/internal node, ancestry, etc. All the links can be defined to be at the same "level," or at different nested "levels", for example. The parameters for defining levels, leafs, nodes etc need not be presented by the art, but merely a tree/list structure which can be described as such by an observer.

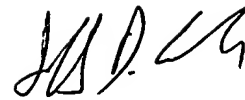
Regarding claim 36, ads targeted to ordered links/URLs are taken to be targeted to the ordered positioning where they reside within the list. Applicant's statement that the applied art would result in the same advertising if a URL was to change positions is narrower than the current claim scope. There are no limitations claimed regarding how ad content would or would not change if the URL positioning were to change.

Regarding claims 42-44, applicant argues that the cookie placed by the search engine can only be read by the search engine. Applicant states that those same cookies (cookies placed by the search engine) cannot be read by an advertising server and cannot be described as unreadable by the search engine. The examiner's combination provides a means to provide third-party cookies for advertising purposes which would be readable by the placing ad server and unreadable by other servers.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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jdc  
December 22, 2004

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